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**1 - EPA nominee vote coming as soon as Wednesday, The Hill, 7/17/13**

<http://thehill.com/blogs/e2-wire/e2-wire/311607-epa-nominee-vote-coming-as-soon-as-wednesday>

The Senate is scheduled to vote on whether to approve Gina McCarthy to lead the Environmental Protection Agency as early as Wednesday, according to Senate Majority Whip Dick Durbin's (D-Ill.) office.

**2 - McCain brokers filibuster deal to avoid nuclear option in Senate, Fort Worth Star-Telegram, 7/17/13**

<http://www.star-telegram.com/2013/07/16/5008612/mccain-brokers-filibuster-deal.html>

Sen. John McCain, R-Ariz., has brokered a deal with Senate Majority leader Harry Reid, D-Nev., to avoid the so-called "nuclear option" and smooth the way for the Senate to approve seven of President Barack Obama's non-judicial branch nominees, a senior Senate Democratic aide said Tuesday.

**3 - Fertilizer industry grows despite safety concerns, San Antonio Express-News, 7/18/13**

<http://www.mysanantonio.com/news/texas/article/Fertilizer-industry-grows-despite-safety-concerns-4671819.php>

Fertilizer plant projects are being proposed across the nation, driven by booming demand for corn and newly abundant supplies of natural gas, a major component in fertilizer production. The plants promise thousands of jobs during construction and hundreds of full-time spots once they're up and running. And most of them would go in small, rural towns where economic development isn't easy.

**4 - EPA air and CO2 rules for utilities likely to cluster in 2 years, Climate Wire, 7/17/13**

<http://www.eenews.net/climatewire/2013/07/17/stories/1059984536>

The year 2015 is likely to be a pivotal time for utilities as they prepare to comply with existing rules and prepare for expected standards from greenhouse gases to ozone, industry officials have said.

**5 - U.S. Gulf oil profits lure \$16 billion more rigs by 2015, Houston Chronicle, 7/18/13**

<http://fuelfix.com/blog/2013/07/18/u-s-gulf-oil-profits-lure-16-billion-more-rigs-by-2015/>

The number of rigs operating in waters deeper than 1,000 feet (300 meters) in the U.S. Gulf will grow to 60 by the end of 2015, said Brian Uhlmer, an analyst at Global Hunter Securities LLC in Houston. As of last week, there were 36 rigs working in those waters, according to industry researcher IHS Petrodata.

**6 – Valero eyeing petrochemical industry in Norco, Baton Rouge Advocate, 7/17/13**

<http://theadvocate.com/news/6538677-123/valero-eyeing-petrochemical-industry-in>

Valero is looking at a \$700 million expansion at its Norco refinery that will serve as the fuel for the company's first big move into the petrochemical industry.

**7 – Researchers, economists to kick off first of many warming hearings for EPW panel, E&E Daily, 7/17/13**

<http://www.eenews.net/eedaily/2013/07/17/stories/1059984529>

Climate scientists, economists and representatives from affected industries will clash tomorrow in what is likely the first of many climate change hearings to be held by the Senate Environment and Public Works Committee.

**8 –Thorny pipeline projects take spotlight as House bill advances, E&E Daily, 7/17/13**

<http://www.eenews.net/eedaily/2013/07/17/stories/1059984523>

A controversial natural gas pipeline project slated to come up at the Federal Energy Regulatory Commission this week is likely to shed light on the merits of a GOP bill moving through the House that would fast-track proposed gas pipelines.

**9 - Sinking sections of eastern New Orleans hurricane levee prompt \$1.3 million repair, New Orleans Times-Picayune, 7/16/13**

[http://www.nola.com/environment/index.ssf/2013/07/sinking\\_sections\\_of\\_eastern\\_ne.html#incart\\_river](http://www.nola.com/environment/index.ssf/2013/07/sinking_sections_of_eastern_ne.html#incart_river)

The Army Corps of Engineers is spending \$1.3 million to raise about 4,000 feet of earthen levee in easternmost New Orleans that has subsided so low it wouldn't be able to withstand a storm surge caused by a so-called 100-year hurricane.

**10 - La. seeks \$68 million for coastal restoration, Baton Rouge Advocate, 7/17/13**

<http://theadvocate.com/news/6495830-123/la-seeks-68-million-for>

The state's Coastal Protection and Restoration Authority board Wednesday approved sending a state proposal request for \$68 million for barrier island restoration and river diversion work to the National Fish and Wildlife Foundation.

**11 - House panel approves bill to let DOE veto EPA rule proposals, Greenwire, 7/17/13**

<http://www.eenews.net/greenwire/2013/07/17/stories/1059984573>

The House Energy and Commerce Committee approved legislation today that would give the Department of Energy veto power over U.S. EPA's air and water rules after a partisan debate today over climate change.

**12 - Ethanol producer calls for overhaul of country's renewable energy policy, Tulsa World, 7/17/13**

[http://www.tulsaworld.com/article.aspx/Ethanol\\_producer\\_calls\\_for\\_overhaul\\_of\\_countrys\\_renewable/20130717\\_49\\_E6\\_CUTLIN754487](http://www.tulsaworld.com/article.aspx/Ethanol_producer_calls_for_overhaul_of_countrys_renewable/20130717_49_E6_CUTLIN754487)

The head of the nation's third largest corn-ethanol producer told senators Tuesday that the country's renewable energy policy should be scrapped and rewritten - the latest attack on the future of the controversial mandate.

**13 - In quest for energy, biofuels gaining ground, Dallas Morning News, 7/16/13**

<http://www.dallasnews.com/business/energy/20130716-in-quest-for-energy-biofuels-gaining-ground.ece>

For more than 130 years, Darling International has operated in a little-known corner of U.S. industry, breaking down the leftovers of the meat industry for products including cattle feed and cosmetics.

**14 - Former EPA senior policy counsel Sussman discusses agency's actions on emissions standards (video), Energy Wire, 7/17/13**

<http://www.eenews.net/tv/2013/07/17>

How willing is U.S. EPA to compromise with industry on its power plant emissions standards? During today's OnPoint, Robert Sussman, the former senior policy adviser at EPA, gives his take on the key hurdles facing the agency as it tries to meet President Obama's aggressive timeline for new and existing power plant emissions standards.

**15 - Does Bill Clinton deserve to have EPA named in his honor? Actually, yes. (Editorial), Washington Post, 7/17/13**

<http://www.washingtonpost.com/blogs/the-fix/wp/2013/07/17/does-bill-clinton-deserve-to-have-epa-named-in-his-honor/>

Former president William Jefferson Clinton will return to Washington on Wednesday, for a celebration of his environmental legacy as the federal government renames the Environmental Protection Agency headquarters in his honor.

**16 - Designing to save the San Antonio River, San Antonio Express-News, 7/17/13**

<http://www.mysanantonio.com/news/environment/article/Designing-to-save-the-San-Antonio-River-4671651.php>

Every time it rains, the bacteria levels of the San Antonio River spike, making the water unsafe, according to the Environmental Protection Agency.

**17 - Electronics recycling a booming industry, Dallas Morning News, 7/17/13**

<http://www.dallasnews.com/business/headlines/20130717-electronics-recycling-a-booming-industry.ece>

Electronics recycling in the U.S. is now a \$20.6 billion industry, up from less than \$1 billion in 2002, according to the Institute of Scrap Recycling Industries Inc. Employees in the U.S. electronics recycling industry multiplied from 6,000 in 2002 to 45,000 in 2011.

**18 - Santa Cruz Lake manager on flood watch from Jaroso burn scar, Santa Fe New Mexican, 7/16/13**

[http://www.santafenewmexican.com/fire\\_information/article\\_ff198ee1-41f2-54d2-957b-e82fedfe6cc2.html](http://www.santafenewmexican.com/fire_information/article_ff198ee1-41f2-54d2-957b-e82fedfe6cc2.html)

The Jaroso Fire has burned more than 11,000 acres in the Pecos Wilderness. Rain on the west side of the burn scar is expected to wash logs and debris into Santa Cruz Lake and could flood small downstream villages, such as Cundiyo and Rio Chiquito, north of Santa Fe. Storm runoff from the burn scar could also affect the upper Pecos Canyon.

**19 - EPA Extends Pre-Enforcement Review Beyond Water Law, Averting Suits , Inside EPA, 7/17/13**

<http://insideepa.com/201307172441031/EPA-Daily-News/Daily-News/epa-extends-pre-enforcement-review-beyond-water-law-averting-suits/menu-id-95.html>

EPA has quietly extended the reach of the Supreme Court's landmark 2012 holding allowing pre-enforcement review of its compliance orders under the Clean Water Act (CWA) to actions governed by many other environmental laws, a move that appears to have preempted expected suits on whether the court's precedent applies to those actions.

**20 - Twelve states sue for documents on 'sue and settle' practice, Greenwire, 7/17/13**

<http://www.eenews.net/greenwire/2013/07/17/stories/1059984570>

Republican attorneys general from a dozen states filed suit yesterday against U.S. EPA, seeking documents related to the agency's alleged "sue and settle" practice of crafting regulations after litigation by green groups.

**21 - Tanker officers plead guilty to dumping oily water overboard, and lying about it, New Orleans Times-Picayune, 7/16/13**

[http://www.nola.com/crime/index.ssf/2013/07/tanker\\_officers\\_plead\\_guilty\\_t.html#incart\\_river](http://www.nola.com/crime/index.ssf/2013/07/tanker_officers_plead_guilty_t.html#incart_river)

Two officers aboard the oil tanker M/T Stolt Facto have pleaded guilty to improperly disposing of oily bilge wastes overboard, then falsifying records to hide the disposal.



## EPA nominee vote coming as soon as Wednesday

By Zack Colman - 07/17/13 09:35 AM ET

The Senate is scheduled to vote on whether to approve Gina McCarthy to lead the Environmental Protection Agency as early as Wednesday, according to Senate Majority Whip Dick Durbin's (D-Ill.) office.

The nominations of McCarthy and Labor Department nominee Thomas Perez are slotted behind Fred Hochberg's nomination to lead the Export-Import Bank, so it's not certain that a vote is coming Wednesday.

That's because the Senate has up to eight hours of debate for Hochberg, though lawmakers could cut that short. But the Senate will invoke cloture on Perez and McCarthy as well, triggering up to 30 and eight hours, respectively, of debate for the nominees.

Still, McCarthy's wait to see if she will run the EPA appears to be nearing its end.

Currently the agency's top air quality regulator, McCarthy's confirmation has been in limbo since President Obama tapped her to lead the EPA in March.

The prospects of her winning Senate approval appear good, as Senate Minority Leader Mitch McConnell (R-Ky.) said last week that McCarthy likely has the support of more than 60 senators.

Source:

<http://thehill.com/blogs/e2-wire/e2-wire/311607-epa-nominee-vote-coming-as-soon-as-wednesday>

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## McCain brokers filibuster deal to avoid nuclear option in Senate

Posted Wednesday, Jul. 17, 2013

By Lindsay Wise

McClatchy Washington Bureau

Sen. John McCain, R-Ariz., has brokered a deal with Senate Majority leader Harry Reid, D-Nev., to avoid the so-called "nuclear option" and smooth the way for the Senate to approve seven of President Barack Obama's non-judicial branch nominees, a senior Senate Democratic aide said Tuesday.

As part of the deal, Democrats reserve the right to use the "nuclear option" if Republicans block the nominees, said the aide, who spoke on condition of anonymity. The nuclear option would change Senate rules so that filibusters could be broken by a simple majority vote rather than the 60 votes now required.

The aide said McCain huddled with Reid after a caucus meeting last night and the two hashed out the deal later that evening by telephone. "McCain decided he was sick of gridlock and brokered a deal to keep this place functioning," the aide said.

According to the terms of the deal, Republicans agree to approve two new nominees for the National Labor Relations Board, sight unseen, without preconditions and without hearings, by Aug. 1. McCain also agreed to deliver enough votes to approve nominees Gina McCarthy to head the Environmental Protection Agency, Thomas Perez to be secretary of labor, and Richard Cordray as director of the controversial Consumer Financial Protection Bureau. The aide said the deal does not include any of the structural changes to the consumer bureau that Republicans had demanded as a pre-condition for approving Cordray.

Without revealing details of the deal, Reid effusively praised McCain on the Senate floor prior to a test vote on Cordray. "John McCain is the reason we're at the point we are," Reid said. "This is all directed toward John McCain from me. No one was able to break through but for him, and he does it at his own peril."

McConnell, who did not participate in the deal, had come into Reid's office last night and asked Reid to take the nuclear option off the table, but Reid refused, the aide said.



# Fertilizer industry grows despite safety concerns

DAVID MERCER, Associated Press, By DAVID MERCER and RAMIT PLUSHNICK-MASTI, Associated Press : July 18, 2013 : Updated: July 18, 2013 7:11am



Photo By Tony Gutierrez

1 of 8

FILE - This April 18, 2013 file photo shows an aerial view of the remains of a fertilizer plant and an apartment complex to the left, destroyed by an explosion in West, Texas that killed as many as 15 people and injured more than 160. As a wave of new fertilizer plant construction and expansion is being proposed across the United States, this deadly explosion highlights how dangerous some of the chemicals used to make fertilizer can be, and how inconsistently they're regulated.

TUSCOLA, Ill. (AP) — In years past, [Brian Moody](#)'s efforts to bring economic development to his small Illinois town focused on modest projects: merging an old hardware store whose owner was retiring with another shop to preserve 30 jobs or pointing artists to a vacant downtown building.

Now he has a bigger prospect. Cronus Chemicals wants to build a \$1.2 billion plant on a nearby cornfield that would manufacture nitrogen-based fertilizer, a staple of the corn and soybean

farms that fill the landscape around Tuscola, a community of 4,500 people about 160 miles south of Chicago.

Similar projects are being proposed across the nation, driven by booming demand for corn and newly abundant supplies of natural gas, a major component in fertilizer production. The plants promise thousands of jobs during construction and hundreds of full-time spots once they're up and running. And most of them would go in small, rural towns where economic development isn't easy.

"It's equally time-consuming and frustrating," Moody said, explaining that such promising job-creating opportunities are rare.

The wave of potential expansion comes with concerns. An explosion at a Texas fertilizer plant in April killed 15 people in the community of West, highlighting the dangers of such facilities and how loosely they're regulated.

But in communities like Tuscola, local officials say they're prepared to handle those risks. A large chemical plant already stands near the proposed fertilizer site.

"The fact is that whether these plants are going to be here or not, we have three major railroads that go right through the middle of this community," said [Steve Ettinger](#), chief of the [Tuscola Fire Department](#). "Those railroads on a daily basis move all kinds of threats."

Experts say conditions are ripe to bring fertilizer production back to the United States after an exodus to the Caribbean and elsewhere a decade or more ago, when high domestic natural gas prices drove many manufactures away.

Since then, new methods of finding natural gas — hydraulic fracturing, which uses high-pressure water and chemicals to break dense layers of rock, and horizontal drilling — have set off energy booms in parts of Pennsylvania, Texas and other states.

"It shouldn't be a surprise that there are a lot of people investing in the fertilizer business right now," said [Pat Westhoff](#), an agricultural economist at the [University of Missouri-Columbia](#).

Like Tuscola, most of the sites being considered are already home to other chemical facilities, which were drawn by the same rail lines and other industrial infrastructure that are attractive to the fertilizer industry.

Over the past two years, the trade publication Argus FMB North American Fertilizer has tracked about 20 proposed fertilizer projects in the United States and Canada, said [Lauren Williamson](#), an Argus editor. Potential new plant locations include Indiana, Iowa, Illinois and North Dakota. Existing factories in Iowa, Louisiana and Oklahoma could be expanded.

Fertilizer is big business, especially in agricultural regions where farmers rely on nitrogen-based products. Profits for publicly traded fertilizer producers have averaged 20 percent or more over

the last decade, according to [Gary Schnitkey](#), an agricultural economist at the [University of Illinois](#), about 25 miles north of Tuscola.

The plant proposed by Cronus Chemical promises about 2,000 short-term construction jobs and 150 permanent positions. That would make it the second- or third-largest local employer.

Agriculture is Tuscola's No. 1 industry, and the high profits of the past few years for corn and soybean farming have helped keep unemployment relatively low — just above 6 percent, well below the statewide rate that exceeds 9 percent.

Behind agriculture, tourism is a steady No. 2 industry. The town is built on the edge of Illinois' Amish country, drawing day-tripping tourists who flock to a homemade candy store and soda fountain.

But growth, as Moody said, doesn't come easily to small towns. So they compete.

Cronus has also found a site in Mitchell County, Iowa, and is seeking incentives from each state as it weighs options. In Illinois, lawmakers passed legislation that includes tax breaks for the newly formed company.

Since the Texas explosion, questions about the kinds of fertilizer the new plants would make and the chemicals that are used have become more important.

The volatile chemical ammonium nitrate fueled the disaster in Texas, and few of the new plants would use it. But many, including the Cronus plant, would use other potentially dangerous chemicals, like anhydrous ammonia, which can be used as a fertilizer on its own or serve as a component in other forms of fertilizer, like urea.

"People should learn from the incident at West," said [Daniel Horowitz](#), managing director of the [Chemical Safety Board](#), a federal agency investigating the Texas explosion. He believes rules need to be reviewed to prevent accidents.

Anhydrous ammonia is ubiquitous in farm country. It is flammable or explosive only in extreme circumstances, but an accidental leak could release a toxic chemical cloud that can drift for miles.

"You don't want to breathe it. It'll burn your lungs," Hettinger said.

Government oversight of such chemicals varies greatly from state to state.

In Illinois, the roughly 800 anhydrous storage sites are inspected annually. The six largest have few, if any, problems, said [Jerry Kirbach](#) of the state [Agriculture Department's Bureau of Agricultural Products Inspection](#).

California requires plants be inspected once every three years.



However, in many states, including Texas, fertilizer plants are considered small polluters, and cash-strapped state environmental agencies conduct inspections only when a complaint is lodged.

[Larry Robb](#) is the emergency manager in Posey County in southern Indiana, where a firm owned in part by large Pakistani company, the [Fatima Group](#), has proposed a \$1.3 billion plant that's run into hurdles.

The state put an offer of incentives on hold over concerns that Fatima's overseas products wind up in explosives in Afghanistan. Since then, local officials have stepped in to help with financing.

Much like officials in Tuscola, Robb said he already deals with other local plants. They regularly report inventories of dangerous chemicals, but he acknowledges he's taking them at their word.

"Could they do something without reporting it? Of course," he said. "Is it likely to be caught? That's a good question."

Still, he and other local officials hope the plant gets off the ground.

"We're optimistic that it will be built," Robb said. "We're looking at growth in our county."

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## REGULATION:

# EPA air and CO2 rules for utilities likely to cluster in 2 years

Tiffany Stecker, E&E reporter

Published: Wednesday, July 17, 2013

The year 2015 is likely to be a pivotal time for utilities as they prepare to comply with existing rules and prepare for expected standards from greenhouse gases to ozone, industry officials have said.

Environmentalists are eager to see Gina McCarthy finally lead U.S. EPA as administrator for a good reason: She has a lot of work ahead. Many utilities are expected to enter compliance with the Mercury and Air Toxics Standards (MATS) rule in 2015, which will cut the amount of mercury emitted by power plants by about 90 percent, according to EPA.



Gina McCarthy, President Obama's pick for EPA administrator, awaits a Senate confirmation vote next week. Photo courtesy of Wikimedia Commons

The Clean Air Interstate Rule, a regulation passed under the George W. Bush administration, will enter the second phase in 2015, requiring new caps for nitrogen oxides and sulfur dioxide pollution.

To top it off, if all goes according to President Obama's recently announced climate plan, the agency will complete a rule capping CO2 emissions for existing power plants -- the source of one-third of the country's greenhouse gas emissions -- by June 2015.

"A confluence of major EPA rulemaking is coming through the pipeline," said Quin Shea, vice president of environment for the Edison Electric Institute (EEI). "2015 is very important, but you can't look at that year in isolation."

The agency is also expected to promulgate a rule for coal ash, review George W. Bush-era air quality standards for ozone, address a new rule for pollution that crosses state lines and implement standards for particulate matter passed last December. Under the Clean Water Act, the agency is expected to require cooling towers for water on all power plants and limits on the discharge of effluent in surface waters.

### **Designated EPA chief enjoys industry support**

Following last week's court decision to vacate a 2011 EPA decision to defer biomass power plants from greenhouse gas permitting, the agency must now act quickly to formulate a way to deal with the complicated accounting of burning wood for energy.

Although acting Administrator Bob Perciasepe has been at the helm since former Administrator Lisa Jackson departed in February, EPA has been reluctant to move on any significant measures until a permanent administrator is confirmed, say sources at utilities.

Despite opposition from Republican members of Congress, who claim McCarthy has maintained a secretive agency in her role as assistant administrator of air and radiation, she has garnered respect and support from many members of industry.

"We've found her to be willing to listen on key issues," said Melissa McHenry, a spokeswoman for American Electric Power Co. Inc., one of the largest privately held utilities in the country.

Still, said McHenry, EPA's oncoming rules, which include the carbon standards for new and existing power plants, must account for the number of coal retirements that will occur in the next few years. AEP will have retired 27 units in seven states between 2011 and 2015. EEI expects that 18 percent of the country's power generation in 2010 will be retired by 2022 for a variety of reasons, including plant age, inability to compete with low natural gas prices, settlements with environmental groups and EPA compliance costs.

"It doesn't make sense to retrofit those plants for MATS compliance," McHenry said. EPA estimates that MATS will cost \$9.6 billion a year, making it one of the most expensive regulations in the agency's history.

### **Lawsuits could delay timetable**

Utility CEOs currently have three big rules on their radar, said Shea: the 316 (b) rule to add cooling water towers, the carbon dioxide standards for new and existing power plants, and MATS. Their concern is to make sure the timelines and targets make sense, that the economic impacts are understood and that departments within EPA work together, rather than in isolation.

The Natural Resources Defense Council released an analysis of regulating existing power plants under the Clean Air Act last December, placing the costs at \$4 billion. This compares with \$25 billion to \$60 billion in health and welfare benefits ([ClimateWire](#), Dec. 6, 2012).

Passing a set of rules together is less expensive than the sum of each, said Dan Lashof, director of NRDC's climate and clean air program, because it avoids stranded investment in some aging coal plants.

Despite timelines, all of these rules are subject to falling in a legal quagmire. EPA's Cross-State Air Pollution Rule, finalized in 2011 to strengthen the pollution controls in CAIR, was struck down in federal court last year. The Supreme Court agreed to hear the case last month, to the delight of environmentalists.

There are currently three industry and state-led lawsuits challenging MATS. And one Texas power plant unsuccessfully challenged the New Source Performance Standards for new power plants before the rule was finalized, which isn't allowed ([Greenwire](#), Dec. 13, 2012).

Environmentalists fear that lawsuits will bog down the standards for new and existing coal plants and push the rulemaking out of Obama's term and into a new administration that is potentially more hostile to environmental regulation.

"There will be delays," said Bill Snape, senior counsel with the Center for Biological Diversity. "We need to move with a lot more alacrity."

# U.S. Gulf oil profits lure \$16 billion more rigs by 2015

Posted on July 18, 2013 at 7:07 am by [Bloomberg](#) in [Crude oil](#), [Offshore](#)



The deep-water Gulf of Mexico, shut down after BP Plc (BP)'s record oil spill in 2010, has rebounded to become the fastest growing offshore market in the world.

The number of rigs operating in waters deeper than 1,000 feet (300 meters) in the U.S. Gulf will grow to 60 by the end of 2015, said Brian Uhlmer, an analyst at Global Hunter Securities LLC in Houston. As of last week, there were 36 rigs working in those waters, according to industry researcher IHS Petrodata.

Producers will need \$16 billion worth of additional rigs to handle the expanded drilling, analysts including Uhlmer estimate. Demand is driven in part by exploration successes in the lower tertiary, a geologic layer about 20,000 feet below the sea floor containing giant crude deposits that producers are only now figuring out how to tap. Companies such as Chevron Corp (CVX) and Anadarko Petroleum Corp (APC) must do more drilling to turn large discoveries into producing wells — as many as 20 wells for each find.

“The Gulf had more than its fair share of discoveries,” Chris Beckett, chief executive officer at Pacific Drilling SA (PDSA), said in an interview. “Right now, the Gulf is the fastest growing deep-water region in the world.”

The revival will add to surging crude oil supplies from the U.S. shale boom, with Gulf production climbing 23 percent to 1.55 million barrels a day by December 2014 from 1.26 million in March, according to the U.S. Energy Information Administration.

## **Under-appreciated Growth**

While deep-water exploration in the Gulf of Mexico has been increasing since 2011, the magnitude of the growth and the potential for revenue and profit for the service companies is under appreciated, Jud Bailey, an analyst at International Strategy & Investment Group in Houston, said in an interview. Offshore contractors from Schlumberger Ltd. (SLB) to Pacific Drilling are benefiting from the region's growth spurt.

Hornbeck Offshore Services Inc (HOS) and other contractors that provide supply vessels to the giant drill ships than can work in water depths of more than two miles are among companies that may reap the biggest benefit from a rebounding Gulf, James West, an analyst at Barclays Plc in New York, said in an e-mail.

Hornbeck is expected to more than double adjusted earnings to \$5.56 a share, from an estimated \$2.43 this year, according to the average of five analysts' estimates compiled by Bloomberg.

Drilling rig contractors Rowan Co. Plc and Noble Corp (NE)., which are building some of the world's most expensive oil rigs to operate in some of the deepest areas offshore, are also expected to at least double earnings per share in the same period.

### **Drilling Moratorium**

The blowout at BP's Macondo well in April 2010 killed 11 workers, injured 17 and triggered an 87-day oil spill that fouled thousands of square miles and shut much of the Gulf to fishing for months. The U.S. suspended drilling in the Gulf for five months, and even after activity restarted, obtaining permits for drilling was slow as federal regulators stiffened safety rules.

As a result, some deep-water drilling rigs migrated to other exploration frontiers such as offshore West Africa and Brazil where work continued. Now some of those rigs are returning, though most of the Gulf's rig growth will come from newly ordered, more sophisticated deep-water vessels, Bailey said. Better financing terms from the shipyards, put in place in late 2010, are helping fuel a record number of orders for new deep-water rigs around the world, David Smith, an analyst at Johnson Rice & Co. in Houston, said in a phone interview.

### **Support Structure**

The Gulf's prosperity today is helped by the large offshore industry already in place along the U.S. Gulf Coast. With infrastructure such as pipelines, ports and supply vessels readily available, producers are able to move quickly from drilling discovery wells to developing the fields. Meanwhile, government permitting has picked up since mid-2011, giving contractors and their customers more confidence that their work can continue, Smith said.

Even though the rules are stricter post-Macondo, the U.S. Gulf still provides a more stable operating environment than other frontier drilling regions around the world, where foreign governments can change the rules on producers, Smith said.

The lower operating costs in the Gulf of Mexico make the region more profitable for service contractors than places such as Brazil and Africa, Global Hunter's Uhlmer said.

A booming offshore U.S. industry comes at a welcome time for diversified oilfield servicers that have struggled with an oversupplied hydraulic fracturing market onshore in the U.S. and Canada that has increased competition and lowered prices. Servicers including Schlumberger and Baker Hughes Inc (BHI). may exceed analysts' estimates for second-quarter revenue from the Gulf driven by "a solid bump in deep-water activity," Bailey wrote in a June 28 note to investors.

### **Better Vision**

Schlumberger and Baker Hughes, among the world's three largest service providers, will report earnings July 19.



“Drilling activity looks like it’s going to start really ramping up here in the Gulf,” Brian Youngberg, an analyst at Edward Jones in St. Louis, who rates Schlumberger shares a buy and owns none. “That’s a very strong positive for the oil services including Schlumberger.”

Improved technology such as seismic imaging, which bounces sound waves off the ocean floor to map pockets of underground oil, has enabled companies to more accurately hunt for crude under layers of salt in the earth’s crust, Beckett said. That’s helped fix one of the biggest challenges in the region from 10 years ago.

“The limitation on the ultra-deepwater in the Gulf of Mexico at the time was the ability to see under the salt,” said Beckett, who spent a decade running Schlumberger’s onshore seismic business. “Now we’re in an environment where you can drill those very expensive subsalt wells with a degree of confidence.”

## **Rig Orders**

Most of the Gulf rig expansion is fueled by newly built rigs rolling out of the shipyards, more so than existing rigs relocating from other parts of the world, Smith said. Lower prices from the shipyards and easier financing terms have induced more construction, he said.

The global industry is in the midst of the fattest pipeline of orders for new deep-water rigs since the advent of deep-water drilling in the 1970s, according to IHS Petrodata. Vessels expected to be delivered between this year and 2019 will be more than double the 39 delivered between 2003 and 2009.

Last year’s 52 ultra-deepwater discoveries around the world, in about 7,500 feet of water or greater, made for a record year in the offshore industry, David Williams, chief executive officer at Noble, told analysts and investors in a presentation earlier this year.

In the Gulf of Mexico, the story is evolving into development over exploration, Uhlmer said.

“It’s more: ‘OK, we know what we have out here, we spent a lot of money buying the right blocks, and now we need to develop them,’” he said. “That’s going to provide you more growth than anything.”

# Valero eyeing petrochemical industry in Norco

## *Advocate staff and wire reports*

Valero is looking at a \$700 million expansion at its Norco refinery that will serve as the fuel for the company's first big move into the petrochemical industry.

The San Antonio company is considering building a methanol unit at the St. Charles Parish plant, which will compress natural gas into liquid in order to manufacture chemicals and plastics.

Valero sees the petrochemical industry as a field that is ripe for growth, said Bill Day, a company spokesman.

"Petrochemicals are growing faster than petroleum-based fuels," Day said. "This is one area where we can add value to shareholders."

Like all of the major chemical and petrochemical plant expansions that are in the works in south Louisiana, the Valero project is being driven by easy access to ample supplies of cheap natural gas in the Haynesville Shale and Texas' Eagle Ford.

"We want to take advantage of the low costs to make feedstocks," Day said.

The expansion is still in the planning stages, Day said, and Valero should have an idea before the end of the year on how it wants to go forward.

Construction is expected to begin in late 2015 or early 2016.

Once completed, the plant will produce about 1.6 million tons of methanol a year. The refinery produces 270,000 barrels of fuel a day.

Company officials said the expansion will create at least 100 construction jobs and 24 permanent jobs at the plant. About 530 people work at the refinery.

Valero completed a \$1.4 billion expansion at the refinery in 2010, which boosted the plant's daily production of fuel by 60,000 barrels. The refinery takes up 1,000 acres along the Mississippi River.

The company has not filed any applications for economic development incentives from the state, Day said.

The state is encouraged by Valero's continued expansion of its St. Charles Parish operations, said Stephen Moret, Louisiana Economic Development department

secretary.

“We look forward to supporting Valero as it expands its Louisiana operations with this methanol plant project,” he said.

St. Charles Parish Assessor Tab Troxler said the plant expansion will have a profound effect on the parish’s tax rolls.

In 2012, Valero paid roughly \$12 million in property taxes in the parish. Troxler said the expansion could pour another \$3 million to \$5 million into the tax base.

“We’re always pleased that there are expansions,” Troxler said. “It says we are in a good business climate, not only in the parish but in the state. The market is strong, and people are looking to invest here in St. Charles Parish. That’s a real positive.”

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## CLIMATE:

# Researchers, economists to kick off first of many warming hearings for EPW panel

Jean Chemnick, E&E reporter

Published: Wednesday, July 17, 2013

Climate scientists, economists and representatives from affected industries will clash tomorrow in what is likely the first of many climate change hearings to be held by the Senate Environment and Public Works Committee.

The panel had been slow to release its witness list, which has been the source of some controversy. Republicans have demanded that Chairwoman Barbara Boxer (D-Calif.) bring in administration officials to testify on President Obama's climate change plan, instead of focusing the hearing on climate science.

Boxer brushed off their criticisms yesterday, saying she would not hold the hearing Republicans are requesting until Gina McCarthy is confirmed as U.S. EPA administrator.

"I don't intend to have meetings about the president's plans without a head of the EPA," she said. But she added that there were "many hearings on climate change coming."

One of the EPW Committee's senior Republicans, meanwhile, said that Boxer's science hearing was unnecessary.

"She has done a hundred of these things," said Sen. James Inhofe (R-Okla.) "There are people who believe the science is settled and people who believe it isn't. It is my effort to make sure they talk about the cost of this thing."

While the hearing will not feature any administration personnel to answer Republican questions about the costs of Obama's climate plans, the minority has invited two witnesses to drive home those points: Diana Furchtgott-Roth, a senior fellow at the conservative Manhattan Institute for Policy Research, and Robert Murphy, a senior economist at the Institute for Energy Research.

Panel Republicans also invited Roger Pielke Jr., a professor of environmental studies at the University of Colorado, Boulder, who studies the nexus between climate science and policy, and University of Alabama scientist Roy Spencer, who says that climate change is mostly natural.

Pielke said in an email to *E&E Daily* that he would focus his testimony on extreme weather events, drawing from Intergovernmental Panel on Climate Change findings.

The Democratic majority, meanwhile, has invited Climate Central Chief Climatologist Heidi Cullen to again appear before the committee. Testifying as a climate change expert for the Weather Channel in 2007, Cullen drew the wrath of then-ranking member Inhofe when she suggested that meteorologists who are skeptics of man-made climate change should be professionally censored. Posts by the Republican committee staff about Cullen's remarks were republished on the *Drudge Report*, drawing so many visitors that the committee's website crashed.

Other witnesses invited by Democrats include Frank Nutter, president of the Reinsurance Association of America; KC Golden, policy director for the Washington state-based think tank Climate Solutions; Jennifer Francis, a researcher at the Institute of Marine and Coastal Sciences at Rutgers University; Scott Doney, director of the Ocean and Climate Change Institute at Woods Hole Oceanographic Institution in Massachusetts; and Margaret Leinen, executive director of the Harbor Branch Oceanographic Institute at Florida Atlantic University.

While Boxer has said she hopes tomorrow's hearing will steer clear of politics, she also said subsequent hearings will focus on Obama's climate change plan, state and local efforts to address climate change and climate change legislation.

A divided Congress is considered very unlikely to enact legislation in the near future to curb greenhouse gas emissions, but several Democratic senators have nonetheless floated proposals in the last few months to do so.

Boxer and Sen. Bernie Sanders (I-Vt.) released a carbon tax bill in February, and Sen. Sheldon Whitehouse (D-R.I.) released another in March. Sen. Dianne Feinstein is preparing her own that would levy a \$10-per-ton "fee" on the electrical sector for carbon emissions.

But while any or all of these offerings might get a hearing in the EPW Committee, they face an uphill battle for passage. The Democratic-controlled Senate approved an amendment to the Senate Democrats' budget plan in March that expressed opposition to a carbon tax.

Odds are even longer in the Republican-controlled House for proposals like the one Rep. Chris Van Hollen (D-Md.) is preparing, which could be released before the August recess ([ClimateWire](#), July 12).

The stalemate on Capitol Hill led to Obama's climate change plan, released last month, which seeks to make full use of the president's executive authority to curb emissions and improve adaptation.

But Sanders said yesterday at the Capitol that executive action won't be enough to avert disaster. Congressional action to price carbon will be needed, he said, which is why hearings like the one tomorrow are crucial.

"I hope we can convince our Republican friends that global warming is real, that it's already causing severe damage to the planet and that if we don't get our act together, the situation will only get worse," Sanders said. "It is absolutely imperative that we come up with the strongest

possible legislation to transform our energy system away from fossil fuels, and into sustainable energy and energy efficiency. That's my hope."

*Reporter Elana Schor contributed.*



## NATURAL GAS:

# Thorny pipeline projects take spotlight as House bill advances

Hannah Northey, E&E reporter

Published: Wednesday, July 17, 2013

A controversial natural gas pipeline project slated to come up at the Federal Energy Regulatory Commission this week is likely to shed light on the merits of a GOP bill moving through the House that would fast-track proposed gas pipelines.

FERC, tasked with overseeing the country's interstate natural gas pipelines, is facing increasing pressure from House Republicans to green-light infrastructure needed to tap the country's newfound glut of natural gas.

Today, the House Energy and Commerce Committee is scheduled to mark up Rep. Mike Pompeo's (R-Kan.) "Natural Gas Pipeline Permitting Reform Act," [H.R. 1900](#), which would require FERC to approve or deny a certificate of public convenience and necessity for a pipeline project within a year -- or the project would automatically be approved.

The bill, which has the backing of Democratic Rep. Jim Matheson of Utah, received a unanimous vote of approval last week from the House Energy and Commerce Subcommittee on Energy and Power ([Greenwire](#), July 10). It also drew far-reaching praise from Republicans during opening statements in the full committee last night.

"This legislation makes common-sense reforms to the natural gas pipeline permitting process and will allow new pipeline projects to be built safely and efficiently to help meet the nation's energy needs," said Energy and Commerce Chairman Fred Upton (R-Mich.).

But Democrats, wary of restricting the time FERC and other agencies have to review complex applications, say H.R. 1900 is a dangerous piece of legislation that needs to be rethought. Ranking member Henry Waxman (D-Calif.) said the bill would arbitrarily limit FERC and other agencies' review time, prompting them to either deny permits or approve projects that aren't sufficiently vetted.

Rep. Gene Green (D-Texas) said he had attempted to work with Pompeo and others to address his concerns with the bill but was unable to.

The issue is at play in a project coming before FERC at the agency's monthly meeting tomorrow.

The commission is slated to take up Transcontinental Gas Pipe Line Co. LLC's proposal to replace more than 2,000 feet of existing 30-inch pipeline under the Brandywine Creek in Chester County, Pa., with a 42-inch pipeline. The company submitted its application last August.

Although Transcontinental received state approval to build the project, FERC in February said it needed more information to complete its review under the National Environmental Policy Act, noting that Transcontinental had not submitted information about the project until January. The company said in a filing last month that the project's completion date was being pushed back to 2014 because it lacked FERC approval and "restrictions imposed by federal, state, and local authorities."

Lynda Farrell, executive director of the Pipeline Safety Coalition, who lives near the project, said her group supports replacing the pipeline with new, larger equipment for safety reasons but that Transcontinental should use a more environmentally sensitive way to lay the pipe.

Farrell also said that her objections would have been more difficult to raise under H.R. 1900, because FERC's review would be limited.

"If you don't have a FERC approval in 12 months, you essentially get it approved if you read between the lines," Farrell said. "FERC can't get the documents they need from the operator."

### **Additional bills**

The House Energy and Commerce Committee is slated to mark up two additional energy bills today that have passed through the Energy and Power Subcommittee, one of which has also drawn the ire of Democrats.

The panel will vote on Rep. Bill Cassidy's (R-La.) "Energy Consumers Relief Act," [H.R. 1582](#), which drew opposition from Democratic members of the committee last night during opening remarks.

The bill would give the Energy Department greater authority over U.S. EPA, a step that Virgin Islands Del. Donna Christensen (D) said is unnecessary in light of the EPA's willingness to work with regions to avoid increased costs for consumers. Rep. Jan Schakowsky (D-Ill.) said the bill is redundant and obstructive.

"We're setting a bad precedent by considering legislation that would give one agency precedent over another," Green said.

Waxman said Cassidy and Pompeo's measures are nothing but "messaging bills" that he hoped would fail. Cassidy's bill, he said, is a "recipe for making federal agencies as dysfunctional as Congress has become."

But Rep. Pete Olson (R-Texas) said the bill is critical to reining in EPA's attempt to grab authority over the electric grid. "This bill will help EPA make real-world choices as their next regulations come out on things like carbon and ozone," he said.

Lastly, the committee will mark up a less contentious bill, [H.R. 83](#), offered by Christensen, which would require the Interior secretary to create a plan that would reduce reliance on imported fossil fuels and develop renewable energy resources in U.S. territories.

That bill drew support from members on both sides of the aisle on the subcommittee.



Everything New Orleans

# Sinking sections of eastern New Orleans hurricane levee prompt \$1.3 million repair

Mark Schleifstein, NOLA.com | The Times-Picayune By Mark Schleifstein, NOLA.com | The Times-Picayune

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on July 16, 2013 at 6:20 PM, updated July 16, 2013 at 6:30 PM

The **Army Corps of Engineers** is spending \$1.3 million to raise about 4,000 feet of earthen levee in easternmost New Orleans that has subsided so low it wouldn't be able to withstand a storm surge caused by a so-called 100-year hurricane.

Included in the reconstruction is a 1,500-foot-long section on either side of U.S. 11 on the edge of the Bayou Sauvage National Wildlife Refuge and smaller areas between U.S. 11 and Interstate 10, and one small area just north of U.S. 90 in the same area, said corps Senior Project Manager Chris Gilmore.

The corps expected this area to settle significantly in a relatively short amount of time, and Gilmore said and "surveys of the reach (will) be taken annually for the first few years." The repair will raise the levee for at least five to 10 years, he said. After that, he said, "a lift may be required to maintain the 100-year elevation." The levee was actually "overbuilt," raised to between 18 1/2 and 19 feet, or 1 1/2 to 2 feet above the 100-year level, and is being raised to that level again.

The biggest area of sinking occurred where rapidly subsiding soils were expected because they lie on top of an ancient slough, or depression, that was once a stream or river bed. The corps had installed a large field of wick drains that were designed to speed the removal of water from the soils. The drains were not affected by the rapid sinking, Gilmore said.

A nearby segment of levee over which a portion of the eastbound and westbound lanes of I-10 were rebuilt did not sink, he said.

The work is being done by a crew hired by the corps. The repairs were delayed for several weeks because high water in the Mississippi River limited the use of fill mined from the Bonnet Carre Spillway, which was partially flooded by water leaking through the spillway structure.

When the permanent pumping station is built at the Lake Pontchartrain end of the 17th Street Canal, these diesel-fueled temporary pumps, photographed in August 2011, will be dismantled. Rusty Costanza, NOLA.com |The Times-Picayune archive

On Monday, the corps had to conduct an emergency cleanup of about 40 gallons of diesel fuel that spilled into the 17th Street Canal when a valve failed at a diesel generator at the temporary gate and pumps structure at the canal's mouth.

The spill was reported Monday at 4 p.m. and was cleaned up by 8 p.m., according to an email from corps project manager Donald Schneider.

"The diesel fuel was contained within our spill containment booms," Schneider wrote. "The failed valve was secured and the spill was cleaned up" by 8 p.m, he said.

The temporary pumps have been in place since June 2006, and will continue to be used until completion of a permanent canal closure and pumps structure at the canal's mouth. Preconstruction work for the structure is under way, and construction should begin this fall.

# La. seeks \$68 million for coastal restoration

By AMY WOLD

*Advocate staff writer*

SLIDELL — The state's Coastal Protection and Restoration Authority board Wednesday approved sending a state proposal request for \$68 million for barrier island restoration and river diversion work to the National Fish and Wildlife Foundation.

The foundation is directing about \$2.5 billion received as part of a criminal settlement with BP and Transocean earlier this year toward restoration work.

Of that money, about \$1.2 billion has been designated specifically for barrier island and river diversion work in Louisiana, said Kyle Graham, deputy director of the Coastal Protection and Restoration Authority.

The request for funding includes construction work on Caminada beach and engineering and design work for East Timbalier island, both in Lafourche Parish.

The diversion work in the proposal includes planning on how to increase flow from the Atchafalaya River into eastern Terrebonne Parish and engineering and design on a diversion from the Mississippi River in the area of Myrtle Grove in Plaquemines Parish.

"We're looking at moving into complete engineering and design," Graham said about the Myrtle Grove project.

The money would also go to start-up planning for three other possible diversion projects on the Mississippi River, including the Mid-Breton Sediment Diversion, Lower Barataria Sediment Diversion and the Lower Breton Sediment Diversion.

These three additional diversion projects don't have any basic information, such as size, design or possible locations, Graham said. This planning will help give some basic information to see which of the projects should move forward for more complete engineering and design.

Garret Graves, chairman of the CPRA board, said there are numerous other sources of funding that will be available to fund other parts of the state's coastal restoration and protection master plan. However, the money from this criminal settlement has to be spent on these specific types of project.

Craig Taffaro, a member of the authority representing the state Division of Administration, also emphasized that this proposal is just one part of a much larger



plan.

“What we’re doing today is putting another step into taking the coastal restoration plan into reality,” he said. “This is how we actually get things moving.”

As planning and engineering work continue on river diversions, Graham said the state is working with The Water Institute of the Gulf to set up a diversion advisory panel. This will be a group of experts to help give technical advice and review of concerns about impacts on fisheries and on marsh soil strength, water quality issues and more, he said.

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## REGULATIONS:

# House panel approves bill to let DOE veto EPA rule proposals

Hannah Northey, E&E reporter

Published: Wednesday, July 17, 2013

The House Energy and Commerce Committee approved legislation today that would give the Department of Energy veto power over U.S. EPA's air and water rules after a partisan debate today over climate change.

Passed 25-18 in a vote that largely followed party lines, Rep. Bill Cassidy's (R-La.) "Energy Consumers Relief Act," [H.R. 1582](#), would require EPA to submit energy-related regulatory proposals costing more than \$1 billion to DOE. If the Energy secretary determines the rule would cause an adverse impact to the economy, the EPA rule wouldn't go forward.

The bill's Republican supporters said EPA has exercised "unchecked authority" to implement new rules without vetting their economic effects, all while using models that run hundreds of years into the future to prove benefits that may not materialize.

"It's not a clear and present danger today," Energy and Commerce Chairman Emeritus Joe Barton (R-Texas) said of climate change. "So the Cassidy bill clearly states, 'Let's put a check on the EPA.'"

Democrats infuriated with the GOP's rejection of climate threats argued the measure was nothing more than an obstructive "messaging bill" and urged Republicans to take note of spreading wildfires, historic droughts and worsening storms like Superstorm Sandy.

"What don't you get about climate change?" Energy and Power Subcommittee ranking member Bobby Rush (D-Ill.) asked. "How are you going to continue to ignore the science? Not only science, but evidence. I'm not going to stick my head in the ground."

Democrats, including Rep. Ben Ray Lujan of New Mexico, asked how Republicans could saddle DOE with more responsibility after gutting the agency's budget.

Republicans rejected Democratic amendments aimed at weakening the measure.

The committee voted 30-19 to defeat an amendment from ranking member Henry Waxman (D-Calif.) that would have removed a provision in the bill to give the Energy secretary veto power over EPA rules.

Waxman defended the proposal, noting that the overall legislation would allow DOE to kill clean air and water rules based on macroeconomic analyses, something that's outside the agency's expertise. He also pointed out that Republicans in the previous Congress voted 145 times to block EPA rules or strip away the agency's authority and to repeal its finding that carbon emissions are dangerous.

Barton shot back that "if you accept the Waxman amendment, there's no reason for the bill."

The committee also voted 28-21 to reject an amendment from Rush that would have excluded the bill from applying to any rule that would have resulted in consumers saving money at the gasoline pump.

But the committee approved by voice vote a Barton proposal that would clarify what DOE officials would oversee EPA decisions and ensure DOE considers the effect of EPA rules on jobs and the economy, wages, and gross domestic product.

Barton said his attempt was to offer up portions of an amendment that Rush offered to the Energy and Power Subcommittee last week. The subcommittee rejected the proposal.

"No compromise could be agreed upon; consequently, this amendment is my attempt in the spirit of what we agreed to do," Barton said. "This amendment would try to delineate the relationship with the DOE and the EPA, and give some additional definition to exactly how you define benefits and costs."

Barton also took the opportunity to blast EPA for its consideration of the "social cost" or social benefits of curbing carbon emissions.

"It's an elegant way to basically, when you propose a rule, you can plug in certain numbers and get any benefit you want from it," he said. "At some point in the future, I may introduce a bill or may ask the full committee or subcommittee to hold a hearing on the social cost of carbon."

Rush said Barton's amendment is flawed because it allows DOE to focus on costs and not consider benefits.

# TULSA WORLD

## Ethanol producer calls for overhaul of country's renewable energy policy

BY CHRISTOPHER DOERING Gannett News

Wednesday, July 17, 2013

7/17/13 at 6:37 AM

WASHINGTON - The head of the nation's third largest corn-ethanol producer told senators Tuesday that the country's renewable energy policy should be scrapped and rewritten - the latest attack on the future of the controversial mandate.

Bill Klesse, CEO Valero Energy Corp., said the Renewable Fuel Standard - an 8-year-old law that requires refiners to produce alternative fuels to help reduce the country's dependence on foreign energy - "is out of control" and needs to be overhauled to better reflect today's marketplace.

"We support and believe that ethanol will be part of the fuel mix in this country, but the RFS is broken," Klesse told members of the Senate Energy and Natural Resources Committee. "We should repeal it and start over. The situation has completely changed."

U.S. refiners are required by the Environmental Protection Agency to use 13.8 billion gallons of ethanol in 2013 and 14.4 billion gallons next year.

By 2022, 36 billion gallons of renewable fuels are required to be part of the nation's fuel supply.

While most gasoline today contains E10, a mix of 10 percent ethanol and 90 percent gasoline, a blend with 15 percent ethanol (E15) also has been approved by the EPA in newer vehicles. However, it has been slow to be adopted by fueling stations because of the high cost to modernize pumps and other equipment.

The oil industry has argued it has hit the "blend wall," a threshold where refiners are struggling to blend enough ethanol into the country's fuel mix to comply with the government mandate.

One challenge is that consumers are cutting back on driving and cars are becoming more fuel efficient. As a result, the public is demanding less fuel with the E10 blend for their tanks.

The oil industry also has been reluctant to back a 15 percent ethanol blend approved by the EPA for cars built since 2001, citing a lack of demand from the public and concern from gas station operators and refiners who are fearful they could be held liable if the fuel damages automobile engines. Ethanol supporters contend those arguments are unfounded and made only to protect the oil industry's own market share.

"It truly is unbelievable the gall of the oil executives who testified on Capitol Hill today. Time and time again they continue to point the finger at someone else, when they should just look in the mirror when it comes to the blame for high gas prices," Tom Buis, CEO of Growth Energy, an ethanol trade group, said in a statement.

"Don't be fooled by what Big Oil may say. They are against any alternative that is less expensive, reduces our dependence on oil and takes away any of their market share," Buis said.

Refiners can purchase special credits known as renewable identification numbers (RINs) - a serial number given to batches of biofuels before they are sold to refiners and gasoline importers looking to comply with the federal mandate - in exchange for not blending the ethanol.

With not enough gallons of fuel available to blend all the ethanol required, refiners are forced to buy these credits in order to comply with the law. RIN prices have soared to a record, topping \$1.30 this week, from a few cents earlier in the year.

Lawmakers from agriculture and major ethanol-producing states defended ethanol and the Renewable Fuel Standard.

"I don't think it's fair to blame the renewable fuel standard, which is the backbone of our renewable energy policy," Sen. Al Franken, D-Minn., said at the hearing. "The policy is helping to wean us off of foreign oil, and I think that is a good thing."

Senate Agriculture Committee Chairman Debbie Stabenow, D-Mich., who is also a member of the Senate Energy and Natural Resources Committee, said the oil industry should give up some of its lucrative tax breaks to help biofuels.

"It is in our interests to create competition and make the Renewable Fuel Standard work," she said. "We're at odds here on how do we move forward with all of this."

Original Print Headline: Renewable energy policy criticized

**Associated Images:**



**Klesse**

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# In quest for energy, biofuels gaining ground



Vernon Bryant/Staff Photographer

Elias Maayeh checks a sample for clarity before proceeding at Texas Biotech in Arlington. Last year biofuels accounted for more than 7 percent of U.S. transportation and heating fuel

1 of 3



By JAMES OSBORNE

Staff Writer

[josborne@dallasnews.com](mailto:josborne@dallasnews.com)

Published: 16 July 2013 08:31 PM

For more than 130 years, Darling International has operated in a little-known corner of U.S. industry, breaking down the leftovers of the meat industry for products including cattle feed and cosmetics.

Then last month the Irving-based rendering giant announced it was entering the biofuels market. Partnered with Valero Energy Corp., Darling was beginning production at a \$425 million plant in Louisiana converting animal fat into fuel.

Biofuels “make up between 25 and 30 percent of sales in fats and oils now,” said Tom Cook, president of the National Renderers Association. “It’s provided a whole new outlet that just adds to the traditional market, which is primarily animal feed.”

From soybean farmers to used cooking oil recyclers, recent growth in the biofuels sector has given industries that trade in organic matter an unexpected entree into the energy sector.

Last year biofuels accounted for more than 7 percent of U.S. transportation and heating fuel. From coast to coast, ethanol and biodiesel are being increasingly mixed with traditional petroleum-based products to run cars and trucks.

In 2005, Congress mandated that refineries add greater amounts of biofuel to the fuel stream. So far that has largely benefited the ethanol industry, which turns corn into motor fuel.

But with the federal mandates starting to shift emphasis to other fuels like biodiesel and renewable diesel, that should change over the next decade, said Ben Evans, a spokesman for the National Biodiesel Board.

“Biodiesel is never going to be the only source of fuel. It’s never going to overtake petroleum,” Evans said. “But right now the transportation fuels market is completely dominated by the petroleum sector.

“We think the market would look a lot better if it was more diversified, like the electricity market, which is very diversified and much more stable.”

For now, the bulk of biodiesel comes from a network of smaller producers, Evans said.

### **Cooking oil**

Jason Burroughs, owner of Austin-based DieselGreen Fuels, sells between 5,000 and 6,000 gallons of pure biodiesel a month in Austin and Dallas. He uses the recycled cooking oil his company collects from restaurants.

But operations hit a snag recently. The biodiesel plant he had used shut down, forcing him to buy the fuel on the open market and resell it to his customers.

“It’s the same net environmental impact, it just doesn’t work out as well for us economically,” he said.

Whether the industry can expand beyond the government mandates remains an open question. But already those that produce so-called feedstocks like soybean oil and animal fat suppliers are feeling an economic boost.

U.S. animal rendering operations have struggled in recent years, after cattle herds were thinned by drought, Cook said. But demand from the biofuels industry has provided a surprising boost. Prices on products such as tallow are up more than 50 percent since 2007.

“The biofuels demand continues to grow. It’s put a good underpinning in the market,” Cook said.

### **Boon to farmers**

Farmers have seen a similar benefit. A 2011 study by Purdue University found high demand from the biofuels sector had led to rising prices on crops such as soybeans and corn.

Concern that rising biofuel demand will lead to a spike in food prices is pushing scientists to look for fuel sources outside the food supply.

Some hope that algae, of which there is near limitless supply across the world's oceans, can one day fill that void.

But the technology to convert algae into an economically viable fuel has not been developed yet, said Arthur Ragauskas, a chemistry professor at Georgia Tech who works on developing new biofuel technologies.

And scientists are waiting to see whether a new technique to turn trees, cornstalks and certain species of grass into a fuel source will prove cost-effective.

"There have been breakthroughs that five or six years ago no one knew if they would happen," Ragauskas said.

[Regulation:](#)

## [Former EPA senior policy counsel Sussman discusses agency's actions on emissions standards](#)



[OnPoint: Wednesday, July 17, 2013](#)

How willing is U.S. EPA to compromise with industry on its power plant emissions standards? During today's OnPoint, Robert Sussman, the former senior policy adviser at EPA, gives his take on the key hurdles facing the agency as it tries to meet President Obama's aggressive timeline for new and existing power plant emissions standards. Sussman, who departed the agency earlier this month, also discusses how the holdup of Gina McCarthy's confirmation as administrator has affected operations and slowed the progress of agency projects.

[Watch Video](#)

[Read Transcript](#)

# Does Bill Clinton deserve to have EPA named in his honor? Actually, yes.

By [Juliet Eilperin](#), Published: July 17 at 11:16 am [E-mail the writer](#)

[Former president William Jefferson Clinton](#) will return to Washington on Wednesday, for a celebration of his environmental legacy as the federal government renames the [Environmental Protection Agency](#) headquarters in his honor.



Singer Barbra Streisand (not pictured) sings, the front row audience including Israeli President Shimon Peres (C), President Bill Clinton (2-L), Israeli Prime Minister Benjamin Netanyahu and his wife Sarah (R), and President of the Republic of Rwanda, Paul Kagame (L) with his wife, listen during the gala in Jerusalem marking Peres' 90th birthday, June 18, 2013. EPA/JIM HOLLANDER / POOL

While several former presidents have federal buildings named after them—including Lyndon B. Johnson, George H. W. Bush and Theodore Roosevelt—it's always worth examining whether the politician in question deserves such an accolade. In the case of Clinton, it's clear he's a natural fit for EPA. Love it or hate it, he enacted some of the most sweeping environmental protections in U.S. history.

Clinton, along with then-EPA administrator [Carol Browner](#) and Interior Secretary [Bruce Babbitt](#), pushed through an ambitious environmental agenda with included both bipartisan measures and controversial initiatives that infuriated Republicans. Sometimes the decisions had an air of political calculation, like when Clinton declared Utah's Grande Escalante a national monument shortly before the 1996 election at the suggestion of his pollster Dick Morris. Other times the initiatives represented a clear consensus, such as the [Safe Drinking Water Act](#) of 1996. Clinton has also continued to press the case for renewable energy and other environmental causes since leaving office, from his perch as head of the [William J. Clinton Foundation](#).

Here are a few of Clinton's environmental accomplishments during his two terms in office:

- The federal government cleaned up 600 contaminated Superfund sites, three times as many sites as had been restored in the previous 12 years
- Clinton protected more than 4 million acres of public land in the form of national parks, monuments and wilderness
- The U.S. Forest Service enacted the so-called "[roadless rule](#)" which put nearly a third of the national forests — roughly 60 million acres — off-limits to most development.
- Clinton created the Office of Children's Health with EPA, to focus specifically on the environment impacts different activities have on the nation's most-vulnerable population.

Despite this, Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.) had to do plenty of heavy lifting to make the naming happen. EPA headquarters already had a name—the [Ariel Rios](#) Building, in honor of an undercover Alcohol, Tobacco and Firearms agent who was slain in the line of duty three decades ago at the age of 28. The building used to house ATF, but now that ATF has its own building, Rios' family supported the idea of naming a reflecting pool after the agent instead.

"It is the wish of the Rios family that the Ariel Rios name come home to ATF headquarters," the agency said in a statement Tuesday.

Still, according to a Boxer aide, the senator knew she needed to muster bipartisan support for naming EPA's building after Clinton. So after a period of negotiation, Senate Republicans and Democrats agreed that they would [rename a federal courthouse in Midland, Tex., after both Bush presidents](#), and would name a [long-vacant Capitol Hill building](#) undergoing renovation after the longest-serving House Speaker in history, Thomas P. "Tip" O'Neill." (While this marked a first for George W. Bush, O'Neill already had a federal government center in Boston named after him, and the Central Intelligence Agency named its Langley, Va. headquarters the [George Bush Center for Intelligence](#) 15 years ago.)

The compromise legislation passed both the House and Senate by unanimous consent late last year, and was signed into law shortly afterward by President Obama. Just last week the George Mahon Federal Building United States Courthouse, which was named after a former Democratic congressman, became the George H.W. Bush and George W. Bush United States Courthouse and George Mahon Federal Building.

So really, everybody wins.

# Designing to save the San Antonio River

By Colin McDonald : July 17, 2013 : Updated: July 18, 2013 7:17am

A view of the San Antonio River, looking south from the Johnson St. bridge. Photo: Nolan Hicks/Express-News

Every time it rains, the bacteria levels of the San Antonio River spike, making the water unsafe, according to the Environmental Protection Agency.

Now, the city and the [San Antonio River Authority](#) are getting behind a new idea that could reduce pollution in the river without building treatment plants or adding chemicals. Low-impact development, a design concept that has been around for at least a decade, affects how roads, malls and subdivisions are built across a watershed.

The goal is for runoff from a developed piece of land to be the same as an undeveloped piece of land.

“It's been a bit of a novelty in this part of the country,” said [William Honker](#), director of the water quality protection division of the Environmental Protection Agency that oversees Texas.

Last week the San Antonio River Authority awarded \$15,000 in prize money to each of three winning teams that developed ideas for how low-impact development could be done for HemisFair Park, a housing development at Port San Antonio and a 1.2-mile-long section of Evers Road in Leon Valley.

The winning design for HemisFair Park included parking lots covered in grass and stormwater storage tanks underneath them so the water can be used later to maintain the flows of the historic acequias.

The tanks and grass provide services similar to that of a natural wetland, which filters and slows floodwater, but is engineered also to meet the needs of an urban park.

The engineers of the winning team said their design would be less expensive than the conventional approach to dealing with runoff because the features designed to capture and use the stormwater would double as aesthetically pleasing features of the park.

“The amazing thing about low-impact design is that we take a necessity and make it a feature,” said [Bain Medina Bain](#) engineer [Hernan Jaramillo](#), who was a member of the seven-person team with the winning proposal for HemisFair.

Similar approaches were used by the teams who offered proposals on redesigning the housing development and roadway.

The challenge with low-impact development, Jaramillo explained, is the solutions for a site are dependent on the type of soils at the site and the type of plants that can grow there. So the drainage plans that would work for a development in south Bexar County, where the ground is sandy and can drain quickly, won't work in the clay that lies underneath most of downtown San Antonio or the limestone that spreads across the North Side of Bexar County.

San Antonio is already trying to get developers to embrace the concept and will give builders credit towards the city's tree canopy requirements if they incorporate LID concepts like a green roof or rain garden, said city arborist Mark Bird.

The San Antonio River Authority is also working on some design guidelines to help developers get started.

“What is really exciting is that the private sector is now interested,” said Assistant City Manager [David Ellison](#).

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# Electronics recycling a booming industry



David Woo/Staff Photographer

Austreberto Casio (left) uses a hatchet to cut wires off of a computer part as Jesus Ramos (right) disassembles a computer at Innovative Electronics Recycling in Fort Worth.

1 of 10



By KRISTA M. TORRALVA

Staff Writer

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The tinkling of precious metals greets Chase Hinsey as he walks into work at his Fort Worth warehouse. Pieces of gold, copper and aluminum coat the floor.

Starting about 3 a.m., workers break apart computers and televisions and send them through shredding machinery to pick apart materials for recycling or reuse.

Hinsey and his company are part of a recent surge of people working in the fastest-growing segment of the scrap recycling industry.

Electronics recycling in the U.S. is now a \$20.6 billion industry, up from less than \$1 billion in 2002, according to the Institute of Scrap Recycling Industries Inc. Employees in the U.S. electronics recycling industry multiplied from 6,000 in 2002 to 45,000 in 2011.

Several factors have contributed to the industry's rapid revolution: significant growth in the consumption of electronics, awareness brought on by state law and recycling programs, and investment in equipment and technology.

Hinsey, 30, saw an opportunity in 2010, when he opened Innovative Electronics Recycling in Fort Worth.

"I wanted to find a business that not a lot of people are in and a service that we could provide," the company vice president of operations said. His wife, Amanda Hinsey, is the president.

Hinsey worked alone for the first four months. Now he employs about 30 people. He declined to disclose his company's revenue but said it is growing and he plans to hire about 10 more people in the next few weeks.

The industry still has room for growth, said Robin Wiener, president of the Institute of Scrap Recycling Industries Inc.

More than 4.4 million tons of electronics were recycled or reused in 2011 in the U.S. But an estimated 2 million tons of used electronics each year "are sitting in your basement or you're sending to a landfill instead," Wiener said.

The majority of used electronic products that enter the recycling stream come from businesses. Only about a quarter of recycled electronics come from residential consumers, Wiener said.

Giant electronics recycler Best Buy launched a recycling program mainly for consumers in 2008. Before that, customers who had large electronics delivered to their home asked the deliverers to take back their old ones, said Scott Weislow, director of environmental services for Best Buy Inc.

### *Making it the law*

Texas is one of Best Buy's most successful states for collecting used electronics. Texas Best Buy stores have collected about 7.5 million pounds, about 8 percent of the total amount collected across the United States and Puerto Rico, Weislow said.

Aside from the state's size, a major factor is the Texas laws regulating the disposal of electronics, he said.

In 2007, the Texas Legislature passed a law that required computer manufacturers to take back and recycle or reuse old computers. In 2011, the state added television manufacturers to the law, and the first recycling report is due to the state next year. Under this program, consumers can recycle their products for free.

Manufacturers are required to report how much materials they collect to the Texas Commission on Environmental Quality each year.

More than 24 million pounds of computer equipment was collected in 2012 — the most in a single year since the program began, according to the Texas Commission on Environmental Quality report to the Legislature. About 20 million pounds were recycled and more than 3 million were reused.

The report only represents recycling from manufacturers who are required to report to the program and “doesn’t fully represent recycling activity in Texas.”

In 2005, California was the only state that had in effect a law regulating how electronics are disposed of. This year about 25 states have electronics recycling laws in effect.

### *Dell's early efforts*

A few years before any state enacted the law, environmental groups called on Round Rock-based Dell Inc. to better recycle its computers. Advocates stressed that computers ended up in landfills, where toxic materials such as lead and mercury could leak into the ground, water and air.

Dell launched a program in 2002 for consumers to have old computers picked up and recycled for a small fee. By 2004, the company included the fee to recycle in the price of the computers.

Dell collected more than 10 million pounds of computer equipment — the most of any manufacturer — in Texas in 2012, according to the Texas Commission on Environmental Quality report to the Legislature.

The number of pounds received each year varies greatly for small businesses like Hinsey’s, he said. In a typical week, he said, he collects about 250,000 pounds’ worth of printers. But pounds of computers vary by the types of computers, he said. A newer laptop, for instance, is much smaller and lighter than a 5- or 10-year-old desktop computer.

Hinsey’s company lost money in its first year and half, while he purchased machinery to get started and spread awareness in the community about his company, he said. Since his first year, the amount of material he’s received has about tripled each year.

“Everybody wondered if there was a profit to be made, and everybody wanted somebody else to find out if there was before they dove into it,” Hinsey said. “There is a profit, but until you get volume, it’s difficult to make money in this market.”

*Follow Krista M. Torralva on Twitter at @KristaMTorralva.*

## Drop-off sites

The city of Dallas provides four drop-off locations for residents to leave computers and televisions at no charge:

### **Customer Convenience Recycling Center at McCommas Bluff Landfill**

5100 Youngblood Road

214-670-0977

Monday-Friday 5 a.m.-8 p.m.

Saturday 6 a.m.-4 p.m.

### **Northeast (Fair Oaks) Transfer Station**

7677 Fair Oaks Ave.

214-670-6126

Wednesday and Saturday

7:30 a.m.-5 p.m.

### **Northwest (Bachman) Transfer Station**

9500 Harry Hines Blvd.

214-670-6150 or 214-243-2670 weekends

Monday-Saturday 7:30 a.m.-5 p.m.

### **Southwest (Oak Cliff) Transfer Station**

4610 S. Westmoreland Road

214-670-1927

## Santa Cruz Lake manager on flood watch from Jaroso burn scar

By Staci Matlock

The New Mexican | Posted: Tuesday, July 16, 2013 6:00 pm

Thousands of Northern New Mexico gardeners and farmers who depend on the small Santa Cruz Lake for irrigation water were already having a tough year due to drought. Now they face the high likelihood of major damage to the lake, dam and irrigation works from debris, ash and floods expected from a nearby wildfire burn scar.

The Jaroso Fire has burned more than 11,000 acres in the Pecos Wilderness. Rain on the west side of the burn scar is expected to wash logs and debris into Santa Cruz Lake and could flood small downstream villages, such as Cundiyo and Rio Chiquito, north of Santa Fe. Storm runoff from the burn scar could also affect the upper Pecos Canyon.

Jim Snyder, a hydrologist with the specialized Forest Service team that assesses post-wildfire damage, said the amount of rain it would take to cause major flood damage depends on a lot of variables, such as the soil moisture and where the rain falls. By one estimate, 2.8 inches of rain falling on the west side of the burn scar over a six-hour period would cause major flooding and damage to the Santa Cruz Lake. "With two to three days of steady rain before that, the soils would be more saturated, and it would take less rain to cause flooding," Snyder said.

The Santa Cruz Lake, a popular fishing spot for anglers, is fed by the Rio del Medio and Rio Frijoles. Portions of the upper watersheds of both rivers were burned in the lightning-started Jaroso Fire. The lake is privately managed by the Santa Cruz Irrigation District, which serves more than 4,000 irrigators and waters 3,000 acres of orchards, alfalfa fields, gardens and commercial farms around the Española Valley.

Rain fell in the area Saturday, and the irrigation water from the Santa Cruz Lake was a little murky with ash and silt on Sunday, said Charlie Esquibel, irrigation district manager. "But there has not been a lot of debris. It hasn't rained heavily, thank God."

Esquibel said irrigators were already feeling the water squeeze from the third year of drought and ongoing problems with silt in the lake. Now there's the specter of burned logs, ash and debris clogging up the dam and shutting down irrigation. Nambé Lake had a similar problem in 2011 after rain pelted the Pacheco Fire scar, sending thousands of logs into the reservoir.

Until last year, Esquibel said, snowmelt filled up the Santa Cruz reservoir and spilled over the dam, providing plenty of irrigation water until at least mid-June. Then enough water is released from the lake to irrigate four days a week.

This year, there wasn't much snowpack in the Sangre de Cristo Mountains, and the lake levels were

already so low that the water didn't spill over the dam. Esquibel has only released water two days a week for irrigators, about 12 hours a day. "Some of these irrigators have 500 acres, and there's no way you are going to irrigate that much land with water only two days a week," he said.

He said the district had planned to raise money to raise the dam height by 8 feet. Those plans may have to be set aside until the risks of flooding are over.

Camping, boating and fishing on the lake also will be affected by floods. The federal Bureau of Land Management manages the recreation on the small lake. For the moment, recreation on the lake remains open.

Snyder said the large wildfires seen more frequently each year actually help create the right weather conditions for the very thunderstorms that then cause flooding. He said 25-year flood events (meaning the largest amount of water flows seen in that time period) happened after each of the recent large wildfires. Floods following the 2011 Las Conchas Fire wiped out the Dixon Apple Farm and damaged Santa Clara Pueblo lands. Floods off the Little Bear Fire scar ruined Bonito Lake, Alamogordo's drinking water supply.

"You tend to see larger thunderstorms over fire scars," Snyder said, especially when the fire has burned areas so hot there is no vegetation or even seeds left in the soil. He said more than half of the acreage burned in the Jaroso Fire was severely burned. Black, bare soils absorb sunlight and increase convection as the lower air heats up and moves through cooler air. Convection is one of the primary ingredients in the formation of thunderstorms.

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# EPA Extends Pre-Enforcement Review Beyond Water Law, Averting Suits

Posted: July 17, 2013

EPA has quietly extended the reach of the Supreme Court's landmark 2012 holding allowing pre-enforcement review of its compliance orders under the Clean Water Act (CWA) to actions governed by many other environmental laws, a move that appears to have preempted expected suits on whether the court's precedent applies to those actions.

According to [a recently disclosed March 21 memo](#), EPA says it is now adding standard language to 10 classes of administrative orders, issued under the Clean Air Act; Safe Drinking Water Act (SDWA); Resource Conservation and Recovery Act (RCRA); Emergency Planning and Community Right-To-Know Act (EPCRA); and Federal Insecticide and Fungicide Act (FIFRA), pledging to allow pre-enforcement judicial review of the orders.

“EPA has determined that it generally would be appropriate to include language regarding a respondent’s ability to seek judicial review in certain categories of unilateral administrative enforcement orders issued under other statutes,” says the memo, which was sent to regional staff from EPA civil enforcement head Susan Shinkman and Office of Site Remediation Enforcement director Elliott Gilberg.

The shift in policy -- which has not been publicized by the agency -- appears to give the regulated entities that originally pushed for pre-enforcement review of CWA orders “most of what they wanted,” negating the need for new cases to test whether the high court's ruling reaches other laws, says one attorney who has tracked the implications of the high court's unanimous ruling in *Sackett v EPA*.

A source at the Environmental Law Institute (ELI) says the memo may help dissuade recipients of compliance orders from challenging them in court, by indicating that the agency is prepared to defend against such lawsuits. “It's a smart move. They're telling their own staff, when you issue an order, then you have to be ready to have that challenged in court. You have to have an administrative record together. It has to be strong. Most groups will be reluctant to challenge an order, even if it's final, if they know the agency has put together a good administrative record, because of the deference the agency will get in court,” the ELI source says.

One area that the memo does not address -- and is still being litigated -- is whether EPA and Army Corps of Engineers determinations that waterbodies are jurisdictional may be challenged in court. “The two main areas to which we wanted to see *Sackett* applied are Army Corps [of Engineers] jurisdictional determinations and compliance order regimes beyond the Clean Water Act -- this memo does well on that second category,” the attorney says.

Another issue the memo does not address -- and is still subject to litigation -- is whether Clean Air Act notices of violation (NOVs) are subject to pre-enforcement review. And the memo is silent on whether some RCRA orders are subject to review, possibly due to case law finding that Congress intended to exempt the orders from review.

## Compliance Orders

In *Sackett*, the justices held that recipients of CWA compliance orders can challenge the orders in court even before the agency seeks to enforce them, placing a major hurdle in front of regulators' efforts to force voluntary compliance or require the agency to amend language in the orders. Writing for the court, Justice Antonin Scalia found that the compliance orders, as currently crafted, constitute "final agency action" under the Administrative Procedure Act (APA) and are eligible for judicial review.

Compliance orders have "all of the hallmarks of APA finality that our opinions establish," finding that they determine "rights or obligations," have "legal consequences" and mark the "consummation" of a decision-making process, he wrote.

While the ruling marked a major loss for EPA and environmentalists, who have sought to use the orders to leverage liable parties into voluntary settlements, the ruling was also narrow enough that some environmentalists said the agency could address any fallout by turning compliance orders into "warning letters."

Scalia's opinion in *Sackett* did not explicitly call for expanded review of compliance orders issued outside of the CWA framework. But the ruling said that compliance orders which carry the threat of fines or other penalties for noncompliance may be subject to pre-enforcement review, which has been widely seen as opening the door to challenges against orders issued under other statutes that rely on a similar enforcement approach as the CWA.

For example, John Cruden, president of the Environmental Law Institute and former head of DOJ's environmental division, told a legal conference last May that the *Sackett* ruling establishes a "presumption effect" precedent that will likely extend the "presumption" of having pre-enforcement judicial review under the APA to recipients of unilateral orders under other environmental statutes except Superfund, where Congress explicitly barred courts from reviewing administrative orders prior to their enforcement.

Essentially, the ruling means that a party is entitled to pre-enforcement review unless it is explicitly barred in the statute, Cruden said. "The Supreme Court wants it to be explicit," Cruden said. "What's explicit? Superfund -- it's not complicated, it's really there, bold."

The agency appears to have largely followed Cruden's assessment. It allows for judicial review of Stop Sale, Use, or Removal Orders issued under section 13 of FIFRA, and administrative compliance orders under either section 1414 of SDWA or section 325(a) of EPCRA.

RCRA orders subject to challenge under the March 21 memo are interim status corrective action orders issued under section 3008(h) of the law, corrective action orders under section 9003(h) and administrative compliance orders under sections 9006(a) or 3008(h).

Not covered are imminent and substantial endangerment orders, issued under section 7003 of RCRA, which provides EPA with broad power to take action to address "imminent and substantial endangerment" and which pre-*Sackett* courts had found to be exempted from pre-enforcement review.



“There is some helpful caselaw for EPA on section 7003, saying that even though it's not in the statute, there is legislative intent to bar pre-enforcement review. But it may not be of much moment at the end of the day, because unless they really need to, EPA typically doesn't use section 7003,” says one attorney who has represented regulated parties in enforcement cases.

## **Judicial Review**

Under the Clean Air Act, the memo opens compliance orders and stop-work orders to review, but does not mention NOVs, review of which has been the subject of a court challenge by Texas-based power company Luminant.

In *Luminant v. EPA*, the company is asking the U.S. Court of Appeals for the 5th Circuit to hold that *Sackett* allows it to sue over a NOV alleging new source review permit violations. Some observers say if the court agrees, then such a ruling would be a major blow to EPA's enforcement program by reducing the incentive for a company served with an NOV to quickly remedy violations, producing [a "chilling effect" on enforcement](#).

The memo is also silent on whether *Sackett* allows for review of jurisdictional determinations, in which EPA or the Corps expresses an opinion on whether a given wetland is protected by the CWA but does not ask a property owner to take any specific action based on that opinion, is still the subject of litigation in federal district courts. In *Belle Co., LLC v. U.S. Army Corps of Engineers*, a Louisiana district court ruled that *Sackett* does not extend to such determinations, but the decision is under appeal to the U.S. Court of Appeals for the 5th Circuit.

“*Belle* may well end up being the leading post-*Sackett* case on the issue,” the attorney says.

In the appeal, Belle Co. is arguing that the *Sackett* decision, which said the APA “creates a ‘presumption favoring judicial review of administrative action,’” supports review of jurisdictional determinations, but rests its argument on other due-process claims as well.

Plaintiffs in jurisdictional cases have argued that a claim of jurisdiction over a wetland opens a property owner to fines and potential criminal penalties for dredging the land unless covered by a permit. And some environmentalists have sought review of agency determinations that CWA jurisdiction does not apply to a marginal wetland, the attorney continues, because “there is no further agency action -- nothing to challenge -- after they make that statement.”

However, the ELI source says *Sackett* may work against review of some jurisdictional determinations.

“Most of those jurisdictional determinations are not final, and *Sackett* says that it has to be final to be reviewable. But each one is going to be fact-specific,” the source says. -- *David LaRoss* ([dlaross@iwpnews.com](mailto:dlaross@iwpnews.com))

# Twelve states sue for documents on 'sue and settle' practice

Jason Plautz, E&E reporter

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Republican attorneys general from a dozen states filed suit yesterday against U.S. EPA, seeking documents related to the agency's alleged "sue and settle" practice of crafting regulations after litigation by green groups.

The [suit](#), filed in the U.S. District Court for the Western District of Oklahoma, asks for documents from lawsuits with environmental groups. The documents, the states say, could show that EPA has been entering into backroom deals with the green groups to spur regulations without letting states have input.

"The EPA is picking winners and losers, exhibiting favoritism, at the expense of due process and transparency," said Oklahoma Attorney General Scott Pruitt, one of the 12 on the suit. "They are manipulating our legal system to achieve what they cannot through our representative democracy. The outcomes of their actions affect every one of us by sticking states with the bill and necessarily raising utility rates by as much as 20 percent."

The case asks a judge to require EPA to comply with an amended Freedom of Information Act request filed in February for documents related to EPA implementation of the regional haze program filed in February. The states were denied a fee waiver for the request, which covered communications with 17 groups, including the Sierra Club, the Environmental Defense Fund and WildEarth Guardians.

Republicans have long charged that EPA and environmental groups have colluded to push the regulatory agenda by having groups sue the agency and use the courts to negotiate settlement agreements with rulemaking requirements.

But EPA spokeswoman Alisha Johnson said the "sue and settle" idea is "not a legal possibility."

"We cannot enter into settlements that provide us with new or additional authority, only for an action we were already obligated under the law to do," Johnson said. "We don't have any input or control over who sues us or what they focus on."

Johnson said EPA is reviewing the case.

In addition to Oklahoma, the states in the case are Alabama, Arizona, Georgia, Kansas, Michigan, Nebraska, North Dakota, South Carolina, Texas, Utah and Wyoming.

Sen. David Vitter (R-La.), who has long criticized EPA over the alleged practice, said the lawsuit and the FOIA rejection are more examples "demonstrating EPA's discrimination extends towards states."

"We recently got the EPA to agree to completely retrain their staff on FOIA practices and issue new agencywide guidance on FOIA practices following completion of the inspector general investigation," Vitter said. "However, their obstructionist tactics while trying to bend FOIA laws remains a problem, especially when they seek to block attorneys general who clearly are acting to advance the public interest."

# Tanker officers plead guilty to dumping oily water overboard, and lying about it

Mark Schleifstein, NOLA.com | The Times-Picayune By Mark Schleifstein, NOLA.com | The Times-Picayune

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on July 16, 2013 at 3:46 PM, updated July 16, 2013 at 3:48 PM

Two officers aboard the oil tanker M/T Stolt Facto have pleaded guilty to improperly disposing of oily bilge wastes overboard, then falsifying records to hide the disposal.

Former Stolt Facto second engineer Anselmo Capillanes, 46, a citizen of the Philippines, was sentenced on July 9 to two years of probation and was ordered to pay a \$15,000 fine, by U.S. District Judge Jay Zainey in New Orleans. Former Stolt Facto chief engineer Inigo Albina, 57, also of the Philippines, will be sentenced on Aug. 7 for his role in the pollution incident.

Stolt-Nielsen LLCStolt-Nielsen LLC

The two men pleaded guilty to violating the federal Act to Prevent Pollution from Ships. The 26,328-gross-ton oil tanker Stolt Facto is owned by Stolt-Nielsen LLC and operated by Gulf Stolt Ship Management, based in Dubai. A statement from the company said it is cooperating with the U.S. Justice Department in the investigation.

"Two crew members from the ship confessed to violating maritime pollution regulations on their own accord," said the statement. "The ship's captain and company officials were unaware of the actions taken by the two crew members.

"Gulf Stolt Ship Management strongly condemns the actions of these two crew members. The company has a very robust environmental policy in place that all employees are aware of," said the statement.

According to explanations filed with the court when the two officers pleaded guilty, beginning in October 2012, Capillanes directed members of the ship's engine room crew to connect hoses from bilge wells and a bilge holding tank on the lower deck of the engine room, and to pump their contents into a sewage holding tank, which caused the oily water to bypass an oil-water separator and be discharged into the ocean.

The transfers and discharges were not recorded in the ship's Oil Record Book, as required by the federal law, which makes it a crime to knowingly violate the MARPOL Protocol, an international treaty regulating pollution from ships.

Albina was responsible for the operation of the engine room, including the maintaining of the Oil Record Book, and he made and signed all the entries in the book, which said the oily water passed through the separator before being discharged overboard.

The violations were discovered on Jan. 15, when the ship was boarded and inspected by the Coast Guard while anchored in the Mississippi River near New Orleans.

"During the boarding, the Coast Guard inspectors found the hoses and pump used to bypass the oil-water separator," said a "factual basis" statement filed during Albina's May 1 guilty plea before U.S. District Judge Stanwood Duval Jr. "When the Coast Guard inspectors questioned the engine room crew about the purpose for the equipment and the operation of the oil-water separator, all except one engineer denied that they bypassed the oil-water separator despite some of them having been ordered to assist with the connection of the hoses and pumps.

"After the Coast Guard's initial interviews of the engine crew, Albina asked each one how he had responded to the Coast Guard's questions," the statement said. "Albina then conducted an all-hands meeting with the engineers and lower-level engine crew. The illegality of the operation was discussed, but Albina told everyone in the meeting to deny knowledge of the hoses going to the sewage holding tank, bypassing the oil water separator."

Albina admitted that he was trying to influence the inspection by telling the crew to lie, the statement said.